



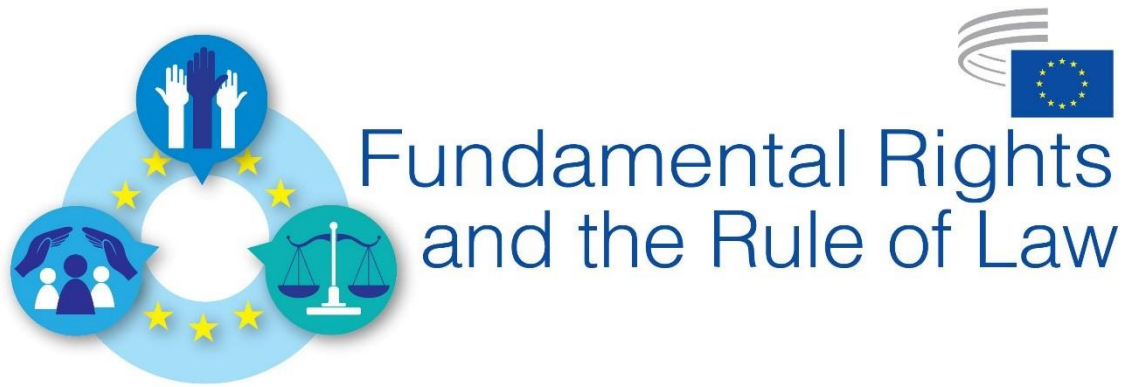
# FUNDAMENTAL RIGHTS AND THE RULE OF LAW

## **Report on the visit to Portugal**

6-7 October 2022



European Economic  
and Social Committee



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Six members took part in the visit to Portugal. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), social partners, the media and the legal professions, as well as the Portuguese authorities. The aim of this report is to faithfully reflect and reproduce the views of civil society.

### 1. Fundamental rights related to social partners

Participants in this session agreed that the **protection provided under law** to social partners was good, and that Portugal had an excellent track record as far as the ratification and implementation of the main International Labour Conventions (ILO) was concerned. It was agreed that social partners supported employers and workers quite well – including through genuine trade union efforts to reach out to groups such as platform and migrant workers – and that they enjoyed a strong legitimacy on the national stage.

**Social dialogue** was solid and covered a wide range of issues, which helped the country through various crises, such as the COVID-19 pandemic. Social dialogue was both bipartite and tripartite, leading to a good number of collective agreements covering a great number of employees. The Portuguese authorities confirmed that they took social dialogue into consideration and pointed to several initiatives in that area, including the Economic and Social Council (CES) and the publication of draft laws in the Labour and Employment Bulletin issued by the Ministry of Labour addressed to the social partners.

Social partners, however, felt that their **participation in decision-making** should be increased. They believed that their involvement in preparing Portugal's National Recovery and Resilience Plan (NRRP) had been insufficient. They also felt that they were consulted too late in the process, and mostly in an informal way, without the possibility of having a significant impact on the content of the plan. A similar reflexion was made in relation to the implementation of the European Social Fund in Portugal.

Some participants pointed to challenges in the area of **collective bargaining** resulting from an update of the Labour Code in 2003. That revision had allowed for expirations to be set to once open-ended agreements, which trade union representatives felt put in question the voluntary aspect of collective bargaining, and meant that agreements could come to an end without proper reason. A representative

for employers underlined that the expiration of a collective agreement did not affect the continuity of the worker protection in areas such as social protection, allowances, or safety at the workplace.

Some participants believed that there was a gap between the legal framework and the **actual protection of trade union rights in companies**. Some workers were reluctant to acknowledge their affiliation with a trade union, which hindered trade unions' ability to obtain effective representation in some companies. It was also mentioned that some companies used the COVID-19 pandemic as a way to complicate contacts between workers and trade unions not represented in their company.

One participant brought up the pressures put on trade unionists specifically aimed to limit **strikes**, which would also affect their career development. An example given was resorting to temporary staff to neutralise the effects of planned strikes. Trade union representatives believed the minimum service rule infringed workers' right to go on strike, while employers' representatives were in favour of the rule. Employers' representatives also lamented that some strikes involved topics which were not directly in their hands.

Employer and worker representatives did not agree on the impact of the **EU Directive on minimum wages**, referring to questions of subsidiarity, the European Court of Justice's ability to intervene in matters concerning national salaries, and the risk of putting a cap on salaries in a country where wages are already low – with the minimum wage close to the poverty line. The Portuguese authorities indicated that Portugal already complied with most aspects of the Directive, and that they intended to continue and reinforce social dialogue when implementing the text, in line with the recent Medium-term agreement to improve incomes, wages and competitiveness between the government and social partners.

The work of **labour inspectors** was considered essential for ensuring the proper implementation of labour laws, however participants regretted that these services lacked the time and human resources to properly carry out their duties. The Portuguese authorities acknowledged these challenges and spoke of the recent recruitments to face them.

## **2. Freedom of association and freedom of assembly**

Participants agreed that the **legal framework** for protecting freedom of association and freedom of assembly was strong in Portugal, and that these rights did not suffer from systemic or serious violations or political pressure. The Portuguese society still benefited from the rights granted after the fall of the dictatorship in 1974. However, participants argued that the legal framework dating from that period needed to be updated, in particular to better protect the identity of people exercising their freedom of association and of assembly. To support this argument, participants brought up the 2021 incident in which the municipality of Lisbon shared demonstrators' personal data with the Russian Embassy.

Some participants explained that the **CSO fabric** in Portugal relied heavily on volunteering, which was weakened but also revitalised in various ways by the pandemic. People tended to show a genuine willingness to volunteer, but in more sporadic ways, and in response to urgent situations. As in other countries, participants felt that the space for civil society was narrowing. CSOs notably suffered from the gradual polarisation of public opinion and from the rise of hate speech, which led to cases of

threats against CSO staff members working in areas related to migration or the integration of people with foreign origins, or members of the Roma community. Participants also believed that the interference of some political parties in the CSO environment was a negative development.

According to participants, CSOs depended mostly on **funding** from the public sector at state and EU levels. These funds were not particularly orientated towards advocacy or monitoring activities. The scarcity and centralisation of resources tended to lead to competition rather than collaboration among CSOs, at least in the human rights field. On a positive note, efforts to do away with the red-tape surrounding setting-up CSOs were welcomed. The Portuguese authorities presented the various schemes available for civil society funding and considered them substantial, particularly in areas related to gender equality, the integration of migrants, the rights of persons with disabilities, the rights of LGBTIQ people, and other discriminations.

Participants believed that **CSO involvement in decision-making** still needed to be stepped up despite the real recent efforts by the authorities, which were also recognised. According to participants, experience showed that whether or not CSOs were consulted mostly depended on the goodwill of the authorities in power at a given time, or on that of specific institutions. Consultations were too often made simply to tick boxes, and not with the aim to genuinely involve CSOs in political dialogue. It was acknowledged that CSOs had been involved in a number of committees (on discrimination, gender equality, human rights, etc), however their involvement was viewed as a mere formality, lacking the possibility for meaningful influence on outcomes. One participant believed that steps should be taken to improve the continuity of exchanges between authorities and CSOs, and that these exchanges should be better organised to avoid last-minute dealings that would result in outcomes of poor quality. The Portuguese authorities mentioned the existence of numerous committees opened to civil society contribution, and also that of a public website to ensure civil society and citizen consultations on draft legislations. Citizens were also entitled a right of initiative in certain legislative areas.

Participants pointed out that there lacked a specific institution to channel the **voice of civil society**. On that point, the Portuguese authorities indicated that the Economic and Social Council (CES) was not restricted to social partners and also integrated various civil society interests. Participants also regretted the scarcity of lasting self-organised platforms among CSOs themselves, and the rare representation of CSOs in the media. In the absence of a regulation on lobbying and advocacy activities, it was felt that the ability to influence policy-making mostly depended on power and financial capacities. One participant also explained that the promoters of projects were often also those paying for compulsory environmental impact assessments. This situation prevented a genuine focus on the general interest, and marginalised the views of independent CSOs in such impact assessments.

### **3. Freedom of expression and freedom of the media**

Participants believed that the legal framework on freedom of expression and media freedom was good, but that significant challenges persisted in the area of **socio-economic developments**. They believed that the media sector suffered from a lack of funding, which was leading to a real crisis affecting quality and investigative journalism and favouring commercialism and sensationalism, despite the existence of a solid code of ethics for journalists that guide the profession. The current economic model was considered unsustainable for the media, given recent developments such as the increasing

costs of production, the scarcity of porters to deliver newspapers, or the local "news deserts" characterised not only by the disappearance of local media, but also of media points of sale. The Portuguese authorities acknowledged the issues faced by the media sector, while noting that such challenges were global. They explained that public funding was available to support regional media and delivering newspapers and magazines to subscribers.

One participant explained that the media sector was highly regulated in Portugal. It was considered that the **Portuguese Regulatory Authority for the Media's** scope to take action was limited by the nomination process of its regulatory board, which was de facto in the hands of the two main political forces that had dominated the parliament for decades. This situation had apparently created a one-year gap between the end of term of the previous board and the installation of the next. One participant explained that several key provisions of the European Media Freedom Act, such as transparency of ownership and the participation of journalists in editorial decisions, were already in effect in Portugal. They also expressed fears that the organisation of media regulators at EU level would lead to a top-down decision-making model.

Like elsewhere in Europe, **journalists' socio-economic situation** was characterised by poor working conditions, precarious labour contracts and low remuneration, especially when considered alongside the social responsibility they carried in democratic societies. The rise of extremist discourses had also brought into question the legitimacy of journalists' work, with examples presented of politicians insulting journalists. Cases of strategic lawsuits against public participation (SLAPPs) also contributed to the rise of self-censorship. One participant pointed to an example of a more explicit attempt to limit journalistic work in the case of a sport journalist summoned to the disciplinary board of the Portuguese Football Federation for having asked a question which was not directly related to the game that was being discussed in the interview. The Portuguese authorities acknowledged individual difficulties faced by journalists, while still noting that the country was a very safe place compared to others, as indicated by the low number of cases reported to the Council of Europe platform to promote the protection of journalism and safety of journalists.

The increasingly difficult **access to public documents** was another issue that was raised. It was explained that a journalist who is refused access to a public document by the authorities could turn to the commission for access to administrative documents. However, public authorities were not bound by the decisions given by that commission, which sometimes left journalists to appeal to courts as a last resort. It came to light that recourse to courts to counter refusal of access to public documents had never been so high. A parallel phenomenon also mentioned was the tendency for public authorities and politicians to limit their responses to journalists. One-sided "declarations" had started to replace traditional press conferences, which usually end with Q&A sessions. The Portuguese authorities considered that the right to access public documents benefitted from strong legal protection covering all administrations, with only limited legitimate exceptions.

It was considered that the difficult situation facing the media not only stemmed from the media providers themselves but was also due to audiences' lack of **awareness and education** on and interest in important principles, such as the difference between facts and opinions, the protection of sources, and the verification of information. A more demanding audience and more qualitative journalism were needed, however current economic models – for example paid subscriptions for quality online news – had become barriers to information for the majority of the population. Some participants shared best

practices in the area, including projects allowing journalists to teach media literacy to the populations most prone to becoming victim to fake news, such as the younger and older populations. Participants also discussed the importance of increasing literacy and safeguards in the area of online algorithms and privacy rights online, such as the right to be forgotten. The Portuguese authorities indicated that they took the global disinformation problem very seriously, and that they promoted media literacy through several channels, including awareness campaigns, an informal group on media literacy involving several institutions, and an amendment to the audio-visual law putting more obligations on the broadcaster in that area.

#### **4. The right to non-discrimination**

Participants appreciated that the authorities had shown more openness to listening to civil society in the area of **anti-discrimination** in recent years, with the National Strategy for Equality and Non-Discrimination regularly integrating the views of CSOs in their work. Participants also welcomed the positive atmosphere for dialogue with the government and the parliament, as well as concrete forums, such as the youth parliament. Participants called for reinforcement in the area of funding, which was available at national and European levels, and also for more long-term support (as opposed to one-off programmes) for CSOs working in the field of anti-discrimination. Participants in general called for more awareness-raising efforts targeted towards citizens, and training for public officials. On that point, the Portuguese authorities brought up a number of training programmes on intercultural dialogue (in particular covering migrants and the Roma community) that involved the education, security, and health sectors. According to the Portuguese authorities, the UN Committee on the Elimination of Racial Discrimination considered the anti-discrimination training given to the Portuguese police to be an example of best practice.

On **disability rights**, participants agreed the law was sound and that the legislation stemming from the Parliament was in line with the requirements of the Convention on the Rights of Persons with Disabilities (CRPD). However, there existed a gap between the law on paper and that in practice, notably concerning the inclusion of people with disabilities in education and work. There was a noticeable difference between the quotas set for the number of employees with disabilities in both public and private jobs, and their actual representation in these sectors. Participants also believed that the law on physical accessibility in public buildings for people with disabilities was not fully enforced. They called for more efforts to implement the law, but also for more updated and disaggregated data. Participants also hailed security forces' openness to anti-discrimination training provided by specialised CSOs, concerning not only disability rights but also those of the LGBTIQ population. The Portuguese authorities indicated that a set of measures existed to facilitate independent living for people with disabilities in the areas of employment, social security and education. Contributions from civil society had been integrated into the national strategy for the inclusion of people with disabilities for 2021-2025, with the aim of ensuring an integrated approach in the implementation phase.

Participants commenting on **LGBTIQ rights** believed that the legal framework had improved in recent years, and that Portugal had humanistic laws, which however still needed to be fully implemented. They regretted the absence of a specific framework to address discriminations, which limited recourses against discrimination at the workplace or in access to services to the general principle of equality recognised by the Constitution. An example of a positive development in this field was the law on legal gender self-determination, which separated the medical and legal aspects of

gender recognition and facilitated procedures in both areas. Participants did, however, regret that the law did not extend to non-nationals, excluding asylum seekers from protection. They indicated that reports of hate-related attacks against LGBTIQ people were low, and that such attacks appeared to be more frequent than the reports suggested, calling for more efforts in the area of data collection and in training law and security officials.

Participants considered the Portuguese legislation on **gender equality** to be rather modern and inspiring for other EU Member States, for example in the area of salary transparency, where an EU Directive on the matter took inspiration from Portuguese law. However, it was also felt that some public services and Portuguese society in general lacked a certain awareness on rights and rules. This called for more capacity building in the police, education, justice, and health sectors. It was also said that victims' confidence needed to be reinforced to encourage more reporting of gender-based crimes, such as gender-based domestic violence and harassment at the workplace. The Portuguese authorities indicated that gender equality had been a constant focus of public action since the return to democracy in 1974, and that the topic was mainstreamed not only in the training of public servants but also in citizenship education programmes in schools.

Participants commenting on the matter of **migrants, including asylum seekers**, regretted that legislation in that area was too scattered, thus hindering their ability to enjoy the rights afforded them by law, for example in the area of reception and integration. Frontline services faced coordination challenges, and asylum seekers had difficulties opening bank accounts and accessing services, such as health services. Positive developments in recent legislative updates facilitating asylum seekers' access to the job market and their children's access to Portuguese nationality were hailed. It was, however, still to be seen how these provisions would be implemented. As far as challenges were concerned, participants regretted that a procedure for identifying statelessness had not yet been effectively put in place, despite the existence of legal provisions. They also believed that the provisions of the Criminal Code needed to be updated to better address incitement to hatred and violence beyond the public sphere. Participants agreed that more training for law and police officials was needed to ensure more effective assistance for victims of hate crimes. The Portuguese authorities indicated that the Criminal Code was indeed going to be amended to expand the scope of hate crimes, and therefore possibilities for redress for victims. They also pointed out that the Council for Migration, a consultative body which directly advised the High Commissioner for Migration, ensured that the largest migrant communities in the country were represented through elections within the relevant CSOs.

## **5. The rule of law**

Participants agreed that there was no general issue with the **independence and integrity of the judiciary**, where judges were under ever-increasing scrutiny on their work. Participants considered that Portugal had a very formalist culture in the area of the rule of law as well as in others, which meant that the legal framework was generally good, but that implementing laws was the main challenge. One participant mentioned a survey of Portuguese judges which showed that nearly one out of five believed that legal proceedings were not always in line the rules, highlighting a need for stronger protocols for the early detection of these kinds of issues.

As far as the **organisation of the judiciary** was concerned, it was explained that judges now made up the majority of the High Judicial Council, and it was hoped that this aspect would not change in the



future. Several participants believed it problematic that some administrative authorities (such as national regulatory bodies) were making decisions that were essentially within the criminal law sphere including decisions involving multi-million-euro fines – with very limited possibilities for judicial review. It was also pointed out that Portugal was doing well in the area of digitalisation of justice, however judges were not included in the board in charge of controlling the IT system used, which created a blind spot without judicial oversight within the judiciary.

Participants considered the **speed of justice** to be the most central problematic issue related to the judiciary, which was attributed to a general lack of financial means in the sector. Examples were given of cases which had stalled for more than a decade in the investigation phase. One participant regretted the lack of effective sanctions for exceeding time limits set for investigative phases. There was also a historic tendency in Portugal to favour large-scale trials for complex white-collar crimes, which contributed to the impression that justice was dragging. This added to a feeling of burdensome processes, which affected trust in the judicial system.

There was a consensus among participants that **access to justice** was also a problem, most notably for the middle class, who did not qualify for legal aid and did not have the means to pay the full cost of judicial proceedings. The criteria for publishing judicial decisions were also deemed unclear. Additionally, it was pointed out that access to justice for prisoners needed to be improved, with participants mentioning the European Court for Human Rights' condemnation of Portugal's prison conditions. The Portuguese authorities stressed that legal aid was accessible to all individuals and entities lacking available funding, but that improvements were possible.

One participant referred to the above-mentioned survey of Portuguese judges that also showed that a quarter of respondents believed that a certain level of **corruption** existed in the profession – a perception which was much higher among the general population. Other participants, however, felt that the survey in question did not reflect reality. One participant pointed out that a national anti-corruption mechanism provided under the National Anti-Corruption Strategy was still in its initial phases. It was also believed that the office of the Attorney General lacked sufficient financial means and a specific structure to carry out investigations in complex corruption cases. On corruption, the Portuguese authorities indicated that a complex legal framework existed, showing political will to take action in this area.

One participant mentioned that there was a general positive perception of authorities' compliance with the rule of law in the context of the **COVID-19 pandemic**. The Constitutional Court and the Ombudsman office played an active role in reviewing the measures taken by the authorities, which temporarily constrained certain rights, in what was the first use of the state of emergency since the return to democracy. It was felt, however, that the authorities did not always appreciate lawyers' proactivity during that period, which one participant said had led to the introduction of non-lawyers in the bar association's oversight body.





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